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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,969	11/09/2001	Edwin Evans	PHDL0640-001	3784
7590	11/10/2003		EXAMINER	
Ellis, Venable & Busam LLP Suite 702 3030 N. Central Avenue Phoenix, AR 85012			ENGLE, PATRICIA LYNN	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/035,969	EVANS, EDWIN
Examiner	Art Unit	
Patricia L Engle	3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 26 September 2003.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-16 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-12, 15 and 16 is/are rejected.

7)  Claim(s) 13 and 14 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ . 6)  Other: \_\_\_\_\_ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Gunn (US Patent 4,544,195).

Regarding claim 1, Gunn discloses a window system for use on a motor vehicle with a convertible soft covering system, the window system comprising: a flexible window (30) having a first window side, a second window side and a window perimeter area; a soft cover window frame (28) having an outside frame side and an inside frame side; and an insertable screen (26) having a first screen side and a second screen side and a bottom side; wherein the window perimeter area on the second window side (of 30) matingly couples with the first screen side (of 26), and the second screen side matingly couples with the inside window frame (see Fig. 5).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gunn in view of Bell (US Patent 5,921,571).

Gunn discloses the window system of claim 1.

Gunn does not disclose that the second side window perimeter and the first screen side are mating coupled using hook and loop type fasteners and the second screen side and the inside window frame are coupled using hook and loop type fasteners. Gunn does disclose that the screen (26) is sewn or otherwise suitably attached to the inside frame side and that the window and the screen are coupled using a zipper.

Bell teaches that zippers and hook and loop type fasteners are equivalent (column 8, lines 10-12). Hook and loop type fasteners would be an equivalent/ suitable attaching means to sewing.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use hook and loop type fasteners to couple the screen with the frame and the flexible window.

The motivation would have been to allow the screen to be removable to make repairing or replacing it easier.

Therefore, it would have been obvious to combine Bell with Gunn to obtain the invention as specified in claim 2.

5. Claims 3, 6, 7, 11, 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gunn.

Gunn discloses the window system of claim 1

Regarding claims 6, 11, 12 and 15, Gunn does not disclose that there is more than one insertable screen between the flexible window and the window frame. It would have been obvious to one of ordinary use two screens instead of one since it has been held that a mere duplication of parts involves only routine skill in the art. Regarding claims 11 and 12, it would have been obvious to one of ordinary skill in the art to rotate the second screen. The motivation would have been to block more insects, air and sunlight.

Regarding claims 3, 7 and 16, Gunn does not disclose the details of the material used for the screen. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a woven vinyl coated material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious mechanical expedient.

6. Claims 4, 5, 8, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gunn in view of the Applicant's Admissions

Gunn disclose the window system of claims 1 and 6 (see above).

Gunn does not disclose that the screen blocks 55-95% of the sunlight.

The Applicant admits that Phifer sells a product called SUNTEX® which blocks over 75% of the sun's rays.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use a screen that blocked the sun's rays as it would merely involve the alternate utilization of an equivalent screen material to achieve the same exact function.

Therefore, it would have been obvious to combine the Applicant's admissions with Gunn to obtain the invention as specified in claim 4, 5, 8, 9 and 10.

***Double Patenting***

7. Applicant is advised that should claim 9 be found allowable, claim 10 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Allowable Subject Matter***

8. Claims 13 and 14 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: The primary reason for the indication of allowable subject matter is that the prior art of record does not disclose or suggest a window system in which the bottom side of the screen is pinched between the spare tire gate and the back gate of a vehicle, in combination with the other elements recited.

***Response to Arguments***

10. Applicant's arguments filed September 26, 2003 have been fully considered but they are not persuasive.

Regarding claim 1, The Applicant argues that Gunn does not disclose a window for a convertible soft top covering system like the applicant's invention. The Applicant does not claim any features of a convertible vehicle to prevent the Gunn reference from meeting the limitations of the claims. The covering for the rear of the pickup truck cover meets the claim limitations because it is a window system for use on a motor vehicle (the truck) with a convertible soft-covering system. The panel (20) is soft and it covers the rear of the truck (the tailgate) and it is convertible because it can be removed from the truck. Therefore the window system of Gunn is analogous art and meets the claim limitation that it is for a convertible soft-covering system. Regarding the Applicant's argument that the screen is not detachable. The Applicant does not claim that the screen is detachable. Instead the Applicant claims that the screen is insertable. Insertable would mean that it is capable of being inserted. The definition of insert is To put or set into, between, or among<sup>1</sup>. The screen of Gunn is insertable because it is capable of being set into the window frame. Regarding the Applicant's argument that the screen of Gunn does not keep window off of passengers while the vehicle is moving, that limitation is not claimed.

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<sup>1</sup>*The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from IHSN Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

Regarding claim 2, the Applicant argues that Bell and Gunn are non-analogous art. However, on page 10, lines 3-4 of the amendment that Applicant states that one source of motivation to combine prior art references is the nature of the problem to be solved. In both Gunn and Bell, there are flexible panels with windows which are attached to the flexible panel. Gunn discloses that the panel is "sewn or otherwise suitable attached" (column 2, lines 62-63). Bell teaches that a window is "secured over the opening by snaps, zippers, Velcro or other suitable securing means" (column 8, lines 10-12). Sewing and using snaps, zippers or Velcro would be equivalent attachment means. Therefore it would have been obvious to one of ordinary skill in the art to choose any attachment means, including the use of a Velcro™ fastener or sewing. Regarding the argument that using a Velcro type fastener in Gunn would destroy the intended function of Gunn, the Examiner disagrees with the Applicant. Gunn discloses that other attachment means could be used. Velcro™ fasteners provide attachment means that would prevent insects from entering the truck bed. Further using a detachable fastening means would allow the screen to be easily changed if a hole were to be formed in the screen, to allow the screen to continue to perform its intended function.

Regarding claims 6, 11, 12 and 15, the applicant argues that the duplication of the screens would not be obvious because the only intention of Gunn is to block insects. However, using multiple screens with a tighter mesh would prevent smaller bugs, such as gnats, from entering the truck bed. As a bi-product of blocking more bugs, sunlight and wind would also be blocked.

Regarding claims 3-5, 7-10 and 16, the Applicant argues that it would not have been obvious to use the claimed material because it is used in the housing industry not the automotive industry. Gunn discloses a convertible soft-cover for a camper. A camper is a mobile home. Therefore it would have been obvious to use material used in the housing industry for a mobile home or mobile tent because they provide housing.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-5777. The examiner can normally be reached on Monday - Friday from 8:00 to 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone

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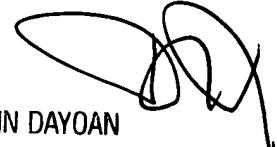
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number for the organization where this application or proceeding is assigned is (703)  
872-9306.

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the receptionist whose telephone number is (703) 308-  
1113.

Patricia L Engle  
Examiner  
Art Unit 3612

ple  
November 4, 2003

  
D. GLENN DAYON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

11/5/03